

**Final Order Denying Refund: 04-20190087R
Gross Retail Tax
For the Years 2016 and 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Alabama Vehicle Dealer was not entitled to a refund of Indiana sales tax collected from its Indiana customers in order to compensate it for an additional two percent tax imposed by the Alabama tax authority; Indiana law required that the Alabama Vehicle Dealer refund sales tax to its Indiana customers before it could obtain any portion of the original Indiana sales tax.

ISSUE

I. Gross Retail Tax - Refund.

Authority: IC § 6-2.5-6-14.1; IC § 6-8.1-9-1(a).

Taxpayer argues that it is entitled to a refund of sales tax equal to the amount of additional tax assessed by its home state tax authority.

STATEMENT OF FACTS

Taxpayer is an Alabama company which sells horse trailers, tractors, farm equipment, and recreational vehicles. Taxpayer states that it collected Indiana sales tax on sales of vehicles to Indiana customers. Taxpayer thereafter was contacted by the Alabama tax authority notifying Taxpayer that "according to new laws implemented in 2016, [Taxpayer] should have been collecting [two percent] Alabama state sales tax." Taxpayer filed a claim with Indiana for \$327.40. That amount represented the two percent amount now owed Alabama. The Department responded on October 2018 denying the refund. The Department's response letter stated that "[i]n this particular situation the individual that created the taxable event, the purchaser, is not the person applying for the refund."

The Department's position is that it was Taxpayer's customers which should have sought the refund. To that end, the Department's response cited to IC § 6-8.1-9-1(a), "If a person has paid more tax than due . . . he may file a claim for refund."

Taxpayer protested the decision denying the refund on the ground that it was Taxpayer - not its customers - who was responsible for paying Alabama the additional sales tax.

An administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest. This Final Order Denying Refund results.

I. Gross Retail Tax - Refund.

DISCUSSION

The issue is whether Taxpayer has established it was entitled to a refund of Indiana sales tax equal to the amount of additional Alabama tax it was later assessed.

Taxpayer states that the two-percent \$327.40 tax was paid to Indiana in error and that it is now entitled to refund of that amount. Taxpayer provided a list of the transactions it entered into with Indiana customers, the amount of each transaction, and a statement that it had paid Alabama the additional two-percent tax.

IC § 6-2.5-6-14.1 provides, "Notwithstanding the refund provisions of this article as incorporated from the gross income tax law ([IC 6-2.1](#), repealed), a retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected."

In each sales instance, Taxpayer collected Indiana's seven percent sales tax from its Indiana customers. IC § 6-2.5-6-14.1 requires that Taxpayer refund its customers sales tax before it may claim a refund. In the alternative, if Taxpayer's customer's overpaid Indiana sales tax, it is those customers which are entitled to claim the refund. In that case, the Department's response was correct; IC § 6-8.1-9-1(a) calls for the customer and not the retail merchant to claim the refund.

Unfortunately, the Department has no statutory remedy in order to relieve Taxpayer of the burden for paying the additional Alabama sales tax assessment, and Taxpayer's request for that refund must be denied.

FINDING

Taxpayer's protest is respectfully denied.

July 12, 2019

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